(1)

Supreme Court, U.S.
FILED

971561 MAR 18 1998

OFFICE OF THE CLERK

NO.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

KEITHIAN L. ARNOLD,
PETITIONER,

vs.

BOATMEN'S TRUST COMPANY,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

KEITHIAN L. ARNOLD
321 RANGE LANE
CAHOKIA, ILLINOIS 62206-1907
618-337-1707

PRO SE PETITIONER

25 pp

I. QUESTION FOR REVIEW

Is it improper for the district judge to dismiss a case which he implied must be filed especially when the defendant's response wasn't timely or properly filed by a qualified attorney or party?

II. OPINIONS BELOW

The U. S. district court granted Boatmen's motion to dismiss and denied my motion for judgment by default as moot. The appellate court affirmed the dismissal and denied my petition for rehearing. All these orders are appended.

III. JURISDICTION

The appellate court's judgment was filed September 25, 1997. The appellate order denying rehearing with in banc suggestion was filed December 18, 1997. This court has jurisdiction under 28 U.S.C. §1254(1).

IV. RULES

See appendix H.

V. STATEMENT OF THE CASE

This case is based on race, sex, and retaliation employment discrimination under 42 U.S.C. §2000e and 42 U.S.C. §1981. The district court order said my complaint was insufficient (App. D p. 4). That court

order noted I named two of the job openings during the period, those being accrual accounting analyst and accountant (App. D p. 3). The district order referenced my second suit against Boatmen's saying this suit's and that one's time frames overlap (App. D p. 4). The district court granted Boatmen's attorney's fees and costs of $4,427.71 (App. E). Federal Rules of Civil Procedure (F.R.C.P.) 11(a) allow papers to be filed in a case by a party or an attorney of record. Boatmen's was served with my complaint and a summons on June 4, 1996. Boatmen's answer was due on June 24, 1996 but none was filed by that date. Boatmen's extension to answer request was received by the clerk on June 20, 1996 and granted on June 24, 1996. However, the attorneys who submitted this request didn't enter their appearance until June 25, 1996. No leave was granted for someone other than a party or attorney of

record to file a paper.

VI. REASONS FOR GRANTING THE WRIT

My complaint was sufficient because I used the court's own complaint form and filled it out completely. I answered all the questions on the form and even named two of the job openings. The time frames don't overlap because in the second suit the jobs of the instant case were dismissed because they hadn't been filed with the EEOC. (I had tried to file the accrual accounting analyst jobs with the EEOC but apparently they weren't processed.) That indicated these job complaints had to be refiled with the EEOC and if necessary refiled in court. Therefore, that court order is the cause of this suit and preceding EEOC charge. An attorney may not submit papers until after entering appearance. Therefore, the motion for an extension of time is invalid and void. Accordingly, the order granting an extension

should be reconsidered and the extension denied. Boatmen's did not file an answer nor properly request an extension by June 24, 1996. Therefore, I should receive judgment by default of the complaint and summons under F.R.C.P. 12(a)(1)(A), 54(c), 55(a), 55(b)(2), 55(d), and the summons. (Dismissing my case after the same district judge implied it had to be filed is very unreasonable and very wrong. Charging me $4,427.71 for obeying that implication to file is extremely

unreasonable and extremely wrong.)

VII. CONCLUSION

I should receive the relief demanded in my complaint or a jury should decide what relief I should receive.

DATE: MARCH 18, 1998

Submitted by,

KEITHIAN L. ARNOLD
PRO SE PETITIONER

APPENDIX A

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 96-4049

Keithian L. Arnold,

Appellant,

V.

Boatmen's Trust Company,

Appellee.

Appeal from the United States District Court for the Eastern District of Missouri.

[UNPUBLISHED]

Submitted: August 4, 1997

Filed: September 25, 1997

Before WOLLMAN, LOKEN, and HANSEN, Circuit Judges.

PER CURIAM.

Keithian L. Arnold appeals from the district court's[1] order dismissing for failure to state a claim Arnold's Title VII and 42 U.S.C. § 1981 employment discrimination action against Boatmen's Trust Company. Upon reviewing the record and the parties'

[1]The Honorable George F. Gunn, Jr., United States District Judge for the Eastern District Of Missouri.

beliefs on appeal, we conclude the district court's judgement was correct. Accordingly, we affirm. See 8th Cir. R. 47B.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS,

EIGHTH CIRCUIT

APPENDIX B

UNITED STATES DISTRICT COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

KEITHIAN L. ARNOLD,)

Appellant,) No. 4:96CV00813 GFG

VS.) Appeal from the United States District Court for the Eastern District of Missouri

BOATMEN'S TRUST COMPANY,

Appellee.

JUDGEMENT

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties. After consideration, it is hereby ordered and adjudged that the judgement of the district court in this cause is affirmed in accordance with the opinion of this Court.

September 25, 1997

A true copy.

ATTEST:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

KEITHIAN L. ARNOLD,)

Plaintiff(s),) **No. 4:96CV00813 GFG**

VS.)

BOATMEN'S TRUST COMPANY,

Defendant(s).

JUDGEMENT

Pursuant to the Memorandum and Order issued herein this day, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that plaintiff's complaint is dismissed.

Dated this_____day of September, 1996.

GEORGE F. GUNN, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

KEITHIAN L. ARNOLD,)

Plaintiff(s),) **No. 4:96CV00813 GFG**

VS.)

BOATMEN'S TRUST COMPANY,

Defendant(s).

MEMORANDUM AND ORDER

This matter is before the Court on defendant's motion to dismiss the complaint for failure to state a claim, and defendant's motion for sanctions. This is the third pro se discrimination case filed in this Court by Keithian L. Arnold, a black male, against Boatmen's Trust Company based on Boatmen's failure to hire him. The first suit (No. 4:92CV785) was filed in forma pauperis in April 1992 and claimed that he was not hired as an accounting clerk in April 1990 because of his race and sex. The Court granted

Boatmen's motion for summary judgment concluding that the record established that Arnold's qualifications fell below those of the successful candidate. This decision was summarily affirmed by the Eighth Circuit Court of Appeals on December 2, 1994. Appeal No. 94-3506.

On November 5, 1994, Arnold filed the second suit (No. 4:93CV2229) in forma pauperis claiming that Boatmen's continuing failure from January through September 1993 to inform him of job openings or hire him for various positions for which he applied was based on his race and sex and in retaliation for his filing the previous suit and charges of discrimination with the Equal Employment Opportunity Commission (EEOC). On June 3, 1994, the Court granted Boatmen's motion for summary judgment because Boatmen's established that all those selected for the jobs in question had relevant

experience whereas Arnold did not. This decision was summarily affirmed on appeal on January 20, 1995. Appeal No. 94-2559.[1]

The present suit was filed on April 26, 1996.[2] Arnold seeks relief under Title VII of the Civil Rights Act of 1964 and 42 U.S.C § 1981. On the form complaint he claims that Boatmen's failed to hire him on account of his race and sex, and in retaliation. He alleges as follows:

> Defendant would tell me of job openings such as accrual accounting analyst or accountant but refuse to hire me. Defendant, also, showed an interest in me when the trial for a previous lawsuit by me against defendant came close but when that lawsuit

---

[1]In addition to the two prior suits against Boatmen's, Arnold has filed unsuccessful failure-to-hire suits against other defendants, including Arnold v. Germania Bank, No. 89-2374C(6) (E.D. Mo. 1989), Arnold v. Community Fed. Sav. & Loan, No. 91-306C(6) (E.D. Mo. 1991), Arnold v. Boatmen's Bank, No. 94-94-WDS (S.D. Ill. 1994).

[2]Arnold's application for in forma pauperis status was denied.

> was delayed and disposed the defendant's interest in me faded and then disappeared.

In the EEOC charge, dated June 16, 1994, attached to the complaint, Arnold states as follows:

> I have not been hired for numerous positions with Boatmen's Trust Company. Employment has been denied me since 1988 when I filed a previous charge of discrimination. I believe that I have not been hired because of my race - Black, my sex - male, and in retaliation for filing previous charges of discrimination.

The date the alleged discrimination took place is listed as July 19, 1993.

The Court agrees with Boatmen's that the allegations in the complaint are insufficient to state a claim under Title VII or section 1981. The Court notes that the date of the alleged discrimination listed on the underlying EEOC charge was within the time frame covered by Arnold's second suit against Boatmen's. Accordingly, defendant's

motion to dismiss the complaint, to which Arnold did not reply, will be granted.

Defendants also seek sanctions in the form of a Court order prohibiting Arnold from filing any further actions against Boatmen's for its failure to hire him, without first obtaining leave of the Court, and that Arnold be required to pay Boatmen's attorney's fees incurred in this case. Upon review of the entire record, the Court concludes that both forms of sanctions requested are appropriate. Cf., e.g., Sassower v. Carlson, 930 P.2d 583 (8th Cir. 1994) (pro se litigant who had filed frivolous and vexatious actions enjoined from filing any civil action in district court without obtaining leave of that court); Galvan v. Cameron Mut. Ins. Co., 831 F.2d 804 (8th Cir. 1987) (imposition of double costs on pro se litigant for filing frivolous appeal).

IT IS HEREBY ORDERED that defendant's motion to dismiss the complaint is granted.

IT IS FURTHER ORDERED that defendant's motion for sanctions is granted. Plaintiff may not file any discrimination actions against defendant based on defendant's failure to hire him, without first obtaining leave of Court.

IT IS FURTHER ORDERED that defendant's litigation costs incurred in this action shall be charged to plaintiff. Defendant shall have up to and including October 21, 1996 to file an accounting of these costs so that the Court may review them for reasonableness.

IT IS FURTHER ORDERED that all other pending motions are denied as moot.

Dated this_____day of September, 1996.

GEORGE F. GUNN, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

KEITHIAN L. ARNOLD,)

Plaintiff(s),) **No. 4:96CV00813 GFG**

VS.)

BOATMEN'S TRUST COMPANY,

Defendant(s).

MEMORANDUM AND ORDER

This matter is before the Court on defendant's application for attorneys' fees and costs and supporting documentation. (Doc. 21.) Plaintiff has not responded to the application. In its order dated September 30, 1996, this Court dismissed plaintiff's complaint alleging employment discrimination against defendant and ordered that defendant's litigation costs should be charged to plaintiff. (Doc. 18.) The Court of Appeals affirmed this Court's decision. (Doc. 27.)

The Court has reviewed defendant's application and finds the attorneys' fees of $4,387.71 and costs of $40 to be reasonable and well-documented.

Accordingly,

IT IS HEREBY ORDERED that plaintiff shall be charged attorneys' fees and costs of $4,427.71.

Dated this_____day of_____, 1998.

_____

GEORGE F. GUNN, JR.
SENIOR UNITED STATES DISTRICT JUDGE

APPENDIX F

Equal Employment Opportunity Commission

DISMISSAL AND NOTICE OF RIGHTS

To: Mr. Keithian L. Arnold
4414 Caseyville Ave., Apt. 6
East St. Louis, IL 62204

From: St. Louis District Office
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
1222 Spruce, Room 8.100
St. Louis, MO 63103

[]On behalf of a person aggrieved whose identity is CONFIDENTIAL (29 CPR § 1601.7(A))

Charge No. 280941310
EEOC Representative: Phyllis Jones
Telephone No. 314-539-7930

(See additional information on the back of this form)
YOUR CHARGE IS DISMISSED FOR THE FOLLOWING REASON:

[ ] The facts you allege fail to state a claim under any of the statutes en forced by the Commission.

[ ] Respondent employes less than the required number of employees.

[ ] Your charge was not timely filed with the Commission, *i.e.* you waited too long after the date(s) of the discrimination you alleged to file your charge. Because it was filed outside the time limit prescribed by law, the Commission

cannot investigate your allegations.

[ ] You failed to provide requested information, failed or refused to appear or to be available for necessary interviews/conferences, or otherwise refused to cooperate to the extent that the Commission has been unable to resolve your charge. You have had more than 30 days in which to respond to our final written request.

[ ] The Commission has made reasonable efforts to locate you and has been unable to do so. You have had at least 30 days in which to respond to a notice sent to your last known address.

[ ] The respondent has made reasonable settlement offer which affords full relief for the harm you alleged. At least 30 days have expired since you received actual notice of this settlement offer.

[x] The Commission issues the following determination: Based upon the Commission's investigation, the Commission is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

[ ] Other (*briefly state*)

-NOTICE OF SUIT RIGHTS-

[x] Title VII and/or the Americans with Disabilities Act: This is your NOTICE OF RIGHT TO SUE, which terminates the Commission's processing of your charge. If you want to pursue your charge further, you have the right to sue the respondent(s) named in your charge in U.S. District Court. If you decide to sue, you must sue **WITHIN 90 DAYS** from your receipt of this Notice; otherwise your right to sue is lost

[ ] Age Discrimination in Employment Act: This is your NOTICE OF DISMISSAL OR TERMINATION ,which terminates the processing of your charge. If you want to pursue your charge further, you have the right to sue the respondent(s) named in your charge in U.S. District Court. If you decide to sue, you must sue **WITHIN 90 DAYS** from your receipt of this Notice; otherwise your right to sue is lost

[ ] Equal Pay Act (EPA): EPA suits must be brought within 2 years (3 years for willful violations) of the alleged EPA underpayment.

I certify that this notice was mailed on the date set out below.

On Behalf of the Commission

_____

Lynn Bruner, District Director

_____

(Date Mailed)

APPENDIX G

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 96-4049EMSL

Keithian L. Arnold,

Appellant,

VS.

Boatmen's Trust Company,

Appellee.

Order Denying Petition for Rehearing and Suggestion for Rehearing En Banc

The suggestion for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

December 18, 1997

Order Entered at the Direction of the Court:

Clerk, U.S. Court of Appeals, Eighth Circuit

APPENDIX H

1. Federal Rules of Civil Procedure

Rule 11. Signing of Pleadings, Motions, and Other papers; Representations to Court; Sanctions

(a) Signature. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorneys individual name, or, if the party is not represented by an attorney, shall be signed by the party.

Rule 12. Defenses and Objections-When and How Presented-By Pleading or Motion-Motion for Judgment on the Pleadings

(a) When presented.

(1) Unless a different time is prescribed in a statute of the United States, a defendant shall serve an answer

(A) within 20 days after being served with the summons and complaint, or

Rule 54. Judgments; Costs

(c) Demand for Judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment.

Rule 55. Default

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

(b) Judgment. Judgment by default may be entered as follows:

(2) By the Court. In all other cases the party entitled to a judgment by default shall apply to the court therefor;

..

(d) Plaintiffs, Counterclaimants, Cross-Claimants. The provisions of this

rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

2. Summons In A Civil Action

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon PLAINTIFF'S ATTORNEY an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.